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Ideas and the Law

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EDITORIAL

IDEAS AND THE LAW*

Ideas are the milestones of history. In fact, history should be taught in terms of personalities and ideas and particularly as a succession of ideas, for it is because of their ideas that significance is attached to the personages of history. Ideas make their appearance rarely enough in any field, but in the law they emerge most slowly and painfully. The law tends to shackle our minds. Lawyers think, let no one doubt that, but our thinking is tradition-bound; our thoughts pace within the walls of a prison. In searching for precedent the lawyer works diligently; he is discerning; he is ingenious and often brilliant in making close distinctions; he reasons well by analogy; but the ambit of his thinking is narrowly confined. May it be that the legal field is not infertile, but that our minds, fettered by legal tradition, are insensitive to the potential discoveries that lie there?

The materials of the law are, in the main, of two types, judge-made law and legislation. Judge-made law is made up of a series of isolated decisions. Since each decision bears only on the special facts in controversy, it serves as precedent for subsequent issues only when it can be brought to bear on them through reasoning by analogy. Now reasoning by analogy is always a delicate and ticklish procedure. And by what token can we assume that the judge on whose decision we rely understood the significance and the implications of the problem before him, and that he solved it wisely? Do not misunderstand me; I am not deriding precedent. I wish merely to say that we overstress it. Each separate decision by a court should be regarded as a matter *sui generis*, which, indeed it is. Viewed in this light each legal controversy involves a study of all the factors that bear on it to the end that we may have an understanding of the problem it presents, and that we may reach a wise solution of the problem. In this process reasoning by analogy has a place, but research on the problem presented

* Condensed from "Letter to the Law Alumni of the University of Illinois" written by Dean Albert J. Harno, April, 1940. —Ed.

should not be confined to a search for precedent. *Solution should be sought in the light of existing influences, social and economic, that make for a wise decision.*¹

I am unable in the compass of this letter to expand these views. It would seem clear that law does not function in a vacuum. It deals with human problems and is always closely related to and affected by other factors, psychological, social or economic. We must understand these factors before resorting to law.

The lawyer stands in a strategic place in the affairs of the nation. Its welfare is dependent on its having wise laws and on their wise administration. The lawyer dominates the growth and development of judge-made law. His is the dominant voice in the enactment of legislation and in its administration. What is more, his is often the deciding voice in the development of community—city and county—projects. His attitude and outlook tend to shape the trend of public—community, state and national—affairs. In an era of specialists he should be a synthesizing force. Law spreads over the whole of society and permeates all of its affairs. It is the lawyer's responsibility to furnish the talent to overview the whole structure. His materials are not law alone, but all the factors that go toward shaping the law, for, after all, law is part of the living tissue of society.

¹ Italics added.—Ed.